

PATENT

Mail Stop Appeal Brief - Patents

Attorney Docket No. INS-31875

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellants : HIRSCH, Alan R.
Serial No. : 10/690,791
Filing Date : October 22, 2003
Examiner : FLOOD, Michele C.
Group Art Unit: 1655
For : Method of Altering Weight Perception
Confirmation No.: 5622

CERTIFICATION OF SUBMISSION

I hereby certify that, on the date shown below, this correspondence is being transmitted via the Patent Electronic Filing System (EFS) at the U.S. Patent and Trademark Office.

Date: AUGUST 10, 2009 Kristine M. Shoddy

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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APPEAL BRIEF UNDER 37 C.F.R. §41.37

Sir:

This is an appeal from the final rejection of Claims 1-4, 26 and 42-47 as stated in the final Office Action mailed January 7, 2009.

The Notice of Appeal was timely filed on June 8, 2009.

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I. REAL PARTY IN INTEREST

The real party in interest is Alan R. Hirsch.

II. RELATED APPEALS AND INTERFERENCES

There are no prior pending related applications or patents under appeal, or the subject of an interference proceeding, or the subject of a judicial proceeding.

III. STATUS OF CLAIMS

The status of all of the claims of this application is as follows:

Claims 1-4, 6-9, 26, 27, 31-33 and 42-47 are pending.

Claims 6-9, 27 and 31-33 were withdrawn by the Examiner.

Claims 5, 10-25, 28-30 and 41 have been canceled.

Claims 1-4, 26 and 42-47 are on appeal.

IV. STATUS OF AMENDMENTS

All amendments have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

All of the claims under appeal relate to a method of modifying perception of body weight of an individual through the administration of a mixture of odorants by inhalation.

The independent claim under appeal is Claim 1.

Claim 1 is directed to a method of modifying perception of body weight by administering a particular mixture of odorants: a mixture of a floral odorant and a spice odorant.

The floral odorant is defined as being selected from the following limited group of odorants: jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom and carnation. The spice odorant is defined as being selected from the following limited group of odorants: cinnamon, ginger, cloves, nutmeg and oriental spice.

Claim 1 further requires that the odorant composition administered is hedonically positive to the (first) person inhaling the composition.

Claim 1 also requires that administering the odorant composition results in an estimate by the (first) person inhaling the composition of the body weight of a second person having a body mass index (BMI) of about 25 or greater, which is

- a) about 5-10% less than actual body weight of the second person, and
- b) less than an estimate of the body weight of the second person by the first person before inhalation of the composition.

Appellant's method is described more fully in the detailed description of the invention at pages 4-10, and particularly at page 4, line 26 to page 5, line 16; page 7, line 19 to page 8, line 14; and page 10, lines 1-16. Odorants are described at page 6, lines 7-20, including commercial sources of the odorants. Screening of odorants for positive hedonics and effectiveness in altering the perception of body weight is addressed at pages 6-7, and particularly at page 7, lines 3-14, setting forth steps in a method of screening an odorant or odorant mixture.

The Examples present a preliminary pilot study (at page 15) and a subsequent test study (at page 14-15). The Examples provide a working example of the steps in administering an odorant mixture to a first individual for inhalation according to Appellant's method as claimed, and assessing the effect of the method and odorant mixture to induce a change in the perception of the body weight of a second individual by the first individual upon inhaling the odorant mixture.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 1-4, 26 and 41-47 fail to comply with the written description requirement (lack of enablement) under 35 U.S.C. §112, first paragraph.

VII. ARGUMENT

A. **Rejection of Claims 1-4, 26 and 41-47 for failure to comply with the written description requirement (lack of enablement) under 35 U.S.C. §112, first paragraph.**

The Examiner finally rejected Claims 1-4, 26 and 41-47 under 35 U.S.C. § 112, first paragraph, on the basis that the claims contain subject matter which is not described/supported in the specification as originally filed in such a way as to enable one skilled in the art to make and/or use Appellant's method as claimed, requiring undue experimentation.

Appellant respectfully requests reversal of this rejection of the claims.

Appellant's specification is sufficiently enabling for one of ordinary skill in the art to make and use the invention disclosed and claimed, and the practice of Appellant's method as claimed would not require undue experimentation.

As stated above, Appellant's invention as presently claimed is a method of modifying perception of body weight by administering a particular mixture of odorants that are hedonically positive to the (first) person inhaling the composition, namely, a mixture of a floral odorant (i.e., jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom and carnation) and a spice odorant (i.e., cinnamon, ginger, cloves, nutmeg and oriental spice).

The claims also require that administering the odorant composition results in a modification of the perception in the (first) individual inhaling the odorant composition of the body weight of a second individual – whereby an estimate by the (first) person inhaling the composition of the body weight of a second person having a body mass index (BMI) of about 25 or greater, which is about 5-10% less than actual body weight of the second person, and less than an estimate of the body weight of the second person by the first person before inhalation of the composition.

The Examiner has cited no prior art reference against the claims and has admitted that there is no known method of modifying perception of body weight as claimed by the Appellant (final Office Action at pages 13-14).

As acknowledged by the Examiner in the final Office Action at page 13, it is well known and established in the art to administer odorants and odorant mixtures to alter an individual's perceived quality of inanimate objects, impressions of others, perception of size or external space by humans, as well as psychological, social and sexual effects on individuals.

Six patents have been issued to Appellant for methods of administering odorants and odorant mixtures to individuals to effect changes to perception, learning capacity, headaches, and body function/behavior, including the following:

USP 5,759,521 (Hirsch) (Method of altering perception of relative space of an area) (administering a green apple odorant) (*Evidence Appendix "A"*)

USP 5,885,614 (Hirsch) (Use of odorants to treat male impotence, and article of manufacture therefor) (administering odorants/mixtures including lily of the valley, rose, lavender and oriental spice) (*Evidence Appendix "B"*)

USP 5,904,916 (Hirsch) (Use of odorants to alter learning capacity) (administering a floral odorant) (*Evidence Appendix "C"*)

These patents demonstrate the level of skill in the (odorant) arts and the understanding of other Examiner's in the USPTO with regard to the administration of odorants to alter behavior and perception.

Steps in administering the odorant mixtures are described in the specification at pages 4-5 (bridging paragraph), at page 5, lines 10-16, and at page 7, lines 19-24. Dispensing the odorant composition is described at pages 7-8 (bridging paragraph), and page 10, lines 1-16. The Test Study Example at pages 14-15 provides a working example of Appellant's method as claimed.

The claims require administering a mixture of a floral odorant (i.e., jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom and carnation) and a spice odorant (i.e., cinnamon, ginger, cloves, nutmeg and oriental spice).

The nature of a mixture of a floral odorant and a spice odorant composed of the recited odorants is well understood in the odorant arts, and one skilled in the odorant arts would readily identify suitable odorants from various sources – both synthetic and natural – that have the recited odorant character and would achieve the desired effect. The claims on appeal employ language known and used in the art and which is of the same scope as the described invention.

The following patents and publications provide evidence of how one skilled in the art uses and understands the terms jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom, carnation, cinnamon, ginger, cloves, nutmeg and oriental spice odorants, and to show the acceptance of these terms in the art, as well as the use and construction applied to these terms by the USPTO.

For example, two U.S. patents issued to Appellant Hirsch and other issued U.S. patents use these terms, which demonstrates the acceptance and an understanding of these terms in the art, as well as the construction applied to these terms and understanding of other Examiners in the USPTO.

The claims of U.S. Patent 5,885,614 (Hirsch) (Use of odorants to treat male impotence...) recite the use of several of the odorants recited in Appellant's claims – including oriental spice odorant, and lavender, lily of the valley and rose odorants, and discloses sources of the odorants at cols. 6-7. (*Evidence Appendix "B"*) See, for example, Claim 1 below (emphasis added).

1. A method of increasing penile blood flow in a male individual, comprising:
administering to the male by inhalation of an odorant in an amount effective to increase penile blood flow; the odorant selected from the group consisting of ...lily of the valley, ...rose, ...lavender, ...oriental spice,

USP 5,904,916 (Hirsch) provides an Example that includes testing of odorants including oriental spice and lavender, and discloses sources of the odorants. (*Evidence Appendix "C"*) See at cols. 7-8 ("Pre-testing of subjects with other odors, i.e., oriental spice (IFF 2245-HS), ...lavender (essential oils)....showed no effect on learning time...").

Other patentees also describe and claim spice and floral odorants. See, for example, see the following U.S. patents:

USP 5,324,490 (Van Vlahakis) (Deodorant container and perfumed stable gel assembly and method of manufacture) (Claim 25 and col. 7, lines 52-64: listing perfumes including jasmine) (*Evidence Appendix "D"*)

USP 5,372,303 (Paul) (Air freshener) (Claim 10 and cols. 8-9, bridging paragraph: oil-based fragrances listing spices, cloves, floral notes, jasmine, lavender) (*Evidence Appendix "E"*)

Reference publications also list the recited odorants. See, for example, Doty (The Smell Identification Test™ Administration Manual, Philadelphia Sensorics, Haddon Heights, N.J.,

1983) at pages 5 and 7, listing cinnamon, clove, lilac and rose odorants, among others (See Evidence Appendix "F")

Importantly, the issuance of U.S. patents that describe and claim odorants listed in Appellant's claims demonstrates that the meaning and scope of the odorants are accepted and well understood in the odorant arts and by the USPTO. The terms jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom, carnation, cinnamon, ginger, cloves, nutmeg and oriental spice odorants have been utilized in various contexts including Appellant's own issued patents as well as other issued patents and publications.

Appellant has described sources of commercial odorants, which are exemplary, that are within the scope of the claims, in the specification at page 6, lines 7-20. The specification at page 6, line 20, also discloses that odorants can be utilized as essential oils, i.e., volatile material isolated from a plant source. One of ordinary skill in the odorant arts would be able to readily ascertain other commercial and non-commercial sources of the odorants that fall within the scope of the claims, and whether a substance had a jasmine aroma, a lilac aroma, a lily of the valley aroma, a cinnamon aroma, a ginger aroma, a oriental spice aroma, or other aroma.

Each of the odorants recited in Claim 1 will possess a distinct and characteristic aroma or odor that defines the particular odorant as it is understood and employed in the art. For example, a jasmine odorant will have a recognizable jasmine odor — regardless of brand or manufacturer.

Known methods in the art can be readily used for identifying and/or preparing odorants within the scope of the claims. For example, it is well known in the art to utilize such methods as gas chromatography-mass spectrometry (GC-MS), among others, to determine the aroma components of an odorant compound. A gas chromatograph distinguishes compounds by comparing to a reference standard.

Appellant in his Response submitted February 11, 2008, submitted publications (Abstracts) that address the identification of aroma components that contribute to various odorants, as follows:

Jordan et al., "Aromatic profile of aqueous banana essence and banana fruit by gas chromatography-mass spectrometry (GC-MS) and gas chromatography-olfactometry (GC-O)," *J. Agric. Food Chem.* 49(10):4813-7 (2001).
(See Evidence Appendix "G")

Zhou et al., Identification and quantification of aroma-active components that contribute to the distinct malty flavor of buckwheat honey," *J. Agric. Food Chem.* 50(7): 2016-21 (2002). (See Evidence Appendix "H")

Hamilton et al., "Measuring Farmstead Odors," Oklahoma Cooperative Extension Service, OSU Extension Facts F-1740 (06-1999), at (<http://agweb.okstate.edu/pearl/biosystems/general/f1740.htm>) : use of a gas chromatograph with a mass spectrometer detector in odorant analysis. (See Evidence Appendix "I")

Kirk-Othmer Concise Encyclopedia of Chemical Technology, John Wiley & Sons, Inc. (1985) at page 844 : use of instrumental techniques to separate and identify volatile organic substances, for example, capillary gas chromatography columns in tandem with a mass spectrometer, Fourier transform nmr spectroscopy. (See Evidence Appendix "J")

Those of ordinary skill in the art of odor science would readily utilize such known and used instruments as a gas chromatograph with a mass spectrometer detector to identify and/or prepare an odorant as recited in the claims according to an established quality. The particular odor ingredients of such odorants mixtures would possess a particular "accord" (or "theme") based on particular "notes" according to the particular odorant – as understood by one of ordinary skill in the odorant arts.

In addition, other patentees have described and claimed methods and systems for identifying different fragrances and the elements (notes) and methods for producing fragrances. The synthesis of odorants within the scope of the claims is well within the skill in the art.

This is evidenced, for example, by USP 5,031,764 (Meador) (Apparatus for Designing Personalized Perfumes), which identifies fragrance families including fruit, floral and oriental/spice, and distinguishing between different families of notes. See at col. 1, lines 43-50 ("...An example of the different fragrance families are fruit, floral, fantasy, ...oriental/spice.... It is therefore easy to distinguish between different families of notes...."). (See Evidence Appendix "K")

In another example, USP 6,606,566 (Sunshine) (Computer code for portable sensing) describes how to analyze and reconstruct an analyte. (See Evidence Appendix "L")

From the commercial sources and the other information provided by Appellant, one skilled in the odorant arts would readily identify and formulate mixtures of suitable odorants that have the characteristics of the recited odorants to achieve the desired effect.

The terms floral and spice odorants – and the terms jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom, carnation,

cinnamon, ginger, cloves, nutmeg and oriental spice odorants, have been utilized in various contexts including Appellant's own issued patents as well as other issued patents and publications and, as such, indicate that the meaning and characteristics of the odorants recited in the claims are well understood by one skilled in the art. One skilled in the odorant arts would readily ascertain and provide suitable odorant mixtures from various sources that have the recited odorant character of a floral odorant and a spice odorants as required by Appellant's claims.

Screening and assessment of effectiveness. Appellant has also described methods that can be used to assess and screen odorants and odorant mixtures for effectiveness in achieving the desired result of modifying perception of a (first) person inhaling the odorant mixture of the body weight of a second person.

As described in the specification at page 7, lines 2-18, screening and assessing an odorant or odorant mixture for effectiveness as recited in Appellant's method can be conducted by administering the odorant/mixture to an individual for inhalation, having the individual estimate the body weight of a person, comparing the estimate of the body weight to actual body weight of the person to provide a "difference value", comparing the difference value to a "control value" to determine the statistical significance of the difference value, and eliminating the odorant or odorant mixture as being ineffective for altering perception of body weight if not statistically significant. The control value can be derived by having the person estimate the body weight of the individual without inhaling the composition (or inhaling an odorless control composition), and comparing the body weight estimate with the actual weight of the individual to provide the control value, preferably before administering the test composition to be screened.

Hedonics. The claims are limited to administering a mixture of floral and spice odorants that is hedonically positive to the (first) person inhaling the composition.

Hedonic perception is an affective evaluation that centers on likes and dislikes (i.e., preferences). Appellant defines the term "hedonically positive odorant mixture" in the specification at page 5, lines 8-9, as follows: "A hedonically positive odorant or odorant mixture is one to which the individual has a pleasant or positive reaction to its scent."

As described at page 6, lines 21-24, screening and assessing an odorant or odorant mixture for positive or negative hedonics can be conducted by administering the odorant/mixture to an individual who is questioned as to a positive or negative reaction to the pleasantness of the

scent (i.e., to identify the composition as hedonically positive or hedonically negative). In addition, as described at page 14, lines 13-14 and 27-28, the Test Study Example included a determination of the hedonics of odorant mixtures – initially by a test panel and also by the individual subjects.

Testing for positive or negative hedonics of an odorant or odorant mixture is well within the understanding of the art. See, for example, USP 5,194,582 (Eldridge) (Process to deodorize an odorous poly(mono-1-olefin), which describes "hedonic tone" of an odor and its measurement at col. 6, lines 37-47 (emphasis added). (*See Evidence Appendix "M"*)

The odor panel then evaluated each polymer for both its odor intensity and its odor quality. ...The odor quality is a measure of how pleasant or how revolting an odor was perceived by the odor panelists while they ignore the odor intensity. The odor quality is also known in the art as the hedonic tone. The odor quality was measured on a scale of -5 to +5 where -5 meant that the sample had a revolting odor and +5 meant that the sample had a pleasant odor and 0 meant that the sample had a neutral odor...

See also USP 5,066,686 (Fodor) (Deodorizing odorous polyolefins with low concentrations of inorganic oxidizing agents), which describes measuring odor quality – or "hedonic tone" of an odor at cols. 4-5, bridging paragraph (emphasis added). (*See Evidence Appendix "N"*)

The odor quality (also referred to in the art as the hedonic tone) was a measure of how pleasant or how revolting a particular odor was perceived. This odor quality was measured on a -3 to a +3 scale where -3 represented a revolting odor and +3 represented a pleasant odor. The 0 point on this scale represented a neutral odor quality. For commercial reasons a neutral odor quality is usually desirable for a polyolefin product.

Appellant has adequately described how to determine the hedonic nature of an odorant or odorant mixture. Based on Appellant's disclosure and the knowledge in the art, one skilled in the art would clearly be able to identify a hedonically positive odorant mixture for use in Appellant's methods as claimed.

Working Examples. In the final Office Action at pages 6-9, the Examiner questioned the sufficiency of the working examples presented by Appellant in the specification at pages 14-15.

As described at page 15, in a *preliminary pilot study* that was run prior to a test study, three *single odorants* (lavender, pumpkin pie and cinnamon odorants) were separately tested on male subjects utilizing a woman subject having a body mass index (BMI) of 23.0. The results of

the Pilot Study Example showed that, despite the hedonically positive nature of the singular odorants to the male subjects, the men did not judge the woman subject (BMI=23.0) to weigh less after inhalation of the odorants.

In a subsequent test study described at page 14, three *odorant mixtures* (citrus and floral odorant mixture, sweet pea and lily of the valley odorant mixture, and floral and spice odorant mixture) that were initially judged to be hedonically positive (by a panel) were tested on male subjects but utilizing a woman subject have a *higher body mass index* (BMI) of 36.2. The Test Study Example describes administering the odorant mixtures and having the test subjects estimate the test model's weight with and without inhalation of the odorant mixtures to determine the effect and effectiveness of the odorant compositions. The results of the Test Study Example showed that of the three odorant mixtures tested, the floral and spice odorant mixture resulted in a statistically significant reduction in perceived body weight of the female subject (BMI=36.2) by male subjects who judged the odorant mixture as hedonically positive, as compared to the control trials.

As stated by the U.S. Court of Customs and Patent Appeals in *In re Borkowski*, 422 F.2d 904, 910, 164 USPQ 642, 646 (CCPA 1970), "there is no magical relation between the number of representative examples and the breadth of the claims; the number and variety of examples are irrelevant if the disclosure is 'enabling' and sets forth the 'best mode contemplated.'"

The Examples provide a working example of the steps in administering an odorant mixture to a first individual for inhalation according to Appellant's method as claimed, and assessing the effect of the method and odorant mixture to induce a change in the perception of the body weight of a second individual by the first individual upon inhaling the odorant mixture.

Satisfaction of the enablement requirement of Section 112 is not precluded by the necessity for some experimentation, such as routine screening. The key word is "undue" not "experimentation." *In re Angstadt and Griffin*, 190 USPQ 214, 219 (CCPA 1976). A considerable amount of experimentation is permissible if it is merely routine, or if the specification provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed. *In re Jackson*, 217 USPQ 804 (Bd. App. 1982).

The elements of Appellant's method as claimed are sufficiently disclosed in the specification as originally filed. The working examples illustrate administering an odorant

mixture having positive hedonics according to Appellant's method, and assessing the effect of the odorant mixture to modify the inhaling person's perception of the body weight of a second person.

The Examiner has provided no persuasive reason why the specification does not realistically enable one skilled in the art to practice the invention as broadly as claimed through the use of the odorants recited in the claims.

The claims do not encompass undefined odorants. The claims on appeal are limited to administering mixtures of floral and spice odorants from a specified list of odorants, namely, jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom, carnation, cinnamon, ginger, cloves, nutmeg and oriental spice odorants.

The claims are further limited to administering a mixture of floral and spice odorants that is hedonically positive to the (first) person inhaling the composition.

The claims are also limited to administering a mixture of floral and spice odorants that is effective to modify the perception of the (first) person inhaling the composition of the body weight of a second person according to the parameters recited in the claims.

At page 6 of the final Office Action, the Examiner argued that the claims are overly broad on the basis that they are directed to modifying perception of body weight in any and all subjects regardless of the gender, age, sexual proclivity or sexual preference or ethnic background of the (first) person inhaling the composition.

However, regardless of the subject, it is implicit in the claims that the conditions of the method are not met unless the mixture of the floral and spice odorants is as defined in Claim 1 – and administering the odorant mixture to the subject achieves the recited effect.

In summary, the nature of the recited odorants, the determination of the hedonics of the composition, and the effect of administering the odorant composition has been adequately described by Appellant as required under Section 112(1), particularly in view of the knowledge and understanding in the art.

The character of the particular odorants recited in the claims is well-delineated and Appellant has provided a disclosure including working examples that would enable one of ordinary skill in the art to obtain and employ the recited odorants and practice Appellant's method as claimed, particularly based on the knowledge in the odorant arts. Clearly, one of

ordinary skill in the odorant arts is fully enabled to practice Appellant's invention without undue experimentation.

Applicant has fully described an embodiment of his invention and the manner for ascertaining effectiveness. Steps in testing and assessing odorants are adequately described and a working example is provided which enables one skilled in the art to readily determine whether a particular odorant mixture works or not. Applicant has provided a sufficiently supporting disclosure, both through the descriptive discussion and example showing guidance to teach one of ordinary skill in the art how to practice each of the elements of the method as claimed without undue experimentation.

Based on Appellant's disclosure and the understanding in the art, it is submitted that the requirements under Section 112(1) have clearly been met in the present disclosure, and that an art worker in this area is fully enabled to practice Appellant's invention as broadly as it is claimed.

Applicant has provided a sufficiently enabling disclosure to meet the requirements of Section 112(1). Accordingly, withdrawal of this rejection is respectfully requested.

Extension of Term. The proceedings herein are for a patent application and the provisions of 37 CFR § 1.136 apply. Appellant believes that no extension of term is required, but conditionally petitions for an extension of time if so required. If any extension and/or fee are required, please charge Account No. 23-2053.

For the reasons stated in the above arguments, Appellant believes that the claims on appeal comply with 35 U.S.C. §112(1), and requests that the final rejection of the claims on appeal be reversed.

Respectfully submitted,



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Dated: August 10, 2009

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VIII. CLAIMS APPENDIX

The claims on appeal are:

1. A method of modifying perception of body weight, comprising:
administering to a first person for inhalation an effective amount of a composition that is hedonically positive to the first person and comprises a mixture of a floral odorant and a spice odorant in effective amounts such that an estimate by the first person of the body weight of a second person having a body mass index (BMI) of about 25 or greater is about 5-10% less than actual body weight of said second person and less than an estimate of the body weight of said second person by the first person before inhalation of the composition, wherein the floral odorant is selected from the group consisting of jasmine, lilac, lily of the valley, magnolia, rose, lavender, geranium, hyacinth, orange blossom, apple blossom and carnation, and the spice odorant is selected from the group consisting of cinnamon, ginger, cloves, nutmeg and oriental spice.
2. The method of Claim 1, wherein the composition comprises a suprathreshold but non-irritant concentration of the floral odorant and the spice odorant.
3. The method of Claim 1, wherein administering the composition comprises dispensing the composition from a dispensing device.
4. The method of Claim 1, wherein administering the composition comprises applying the composition onto the first person.
26. The method of Claim 1, wherein the floral odorant is a mixture of floral odorants and the spice odorant is a mixture of spice odorants.
42. The method of Claim 1, further comprising, prior to administering the composition, testing olfactory ability of the first person.

43. The method of Claim 42, wherein testing the olfactory ability of the first person comprises administering a forced-choice, scratch-and-sniff identification test.
44. The method of Claim 1, further comprising, prior to administering the composition, testing olfactory threshold of the first person.
45. The method of Claim 44, wherein testing the olfactory threshold of the first person comprises administering a series of dilutions of a odorant substance in ascending order.
46. The method of Claim 45, wherein the odorant substance is selected from the group consisting of butyl alcohol, phenylethyl alcohol and pyridine.
47. The method of Claim 1, further comprising, prior to administering the composition, asking the first person to identify the mixture of the floral odorant and the spice odorant as either hedonically positive or hedonically negative.

IX. EVIDENCE APPENDIX

A copy of the below listed documents is attached following *page 22* of this paper.

The following patent reference was submitted by Appellant in the Information Disclosure Statement (IDS) filed November 22, 2004, and entered into the record by the Examiner.

- A) USP 5,759,521 (Hirsch) (Method of altering perception of relative space of an area) (administering a green apple odorant)

The following references were submitted by Appellant in the Information Disclosure Statement (IDS) and Response filed February 11, 2008, and entered into the record by the Examiner.

- B) USP 5,885,614 (Hirsch) (Use of odorants to treat male impotence, and article of manufacture therefor)
- C) USP 5,904,916 (Hirsch) (Use of odorants to alter learning capacity)
- D) USP 5,324,490 (Van Vlahakis) (Deodorant container and perfumed stable gel assembly and method of manufacture)
- E) USP 5,372,303 (Paul) (Air freshener)
- F) Doty, The Smell Identification Test™ Administration Manual, Sensonics, Haddon Heights, N.J., 22 pp. (1983)
- G) Jordan et al., *J. Agric. Food Chem.* 49(10):4813-7 (2001)
- H) Zhou et al., *J. Agric. Food Chem.* 50(7): 2016-21 (2002)
- I) Hamilton et al., "Measuring Farmstead Odors," Oklahoma Cooperative Extension Service, OSU Extension Facts F-1740 (06-1999)
- J) *Kirk-Othmer Concise Encyclopedia of Chemical Technology*, John Wiley & Sons, Inc., p. 844 (1985)
- K) USP 5,031,764 (Meador) (Apparatus for Designing Personalized Perfumes)
- L) USP 6,606,566 (Sunshine) (Computer code for portable sensing)
- M) USP 5,194,582 (Eldridge) (Process to deodorize an odorous poly(mono-1-olefin)
- N) USP 5,066,686 (Fodor) (Deodorizing odorous polyolefins with low concentrations of inorganic oxidizing agents)

X. RELATED PROCEEDINGS APPENDIX

None.